IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 25TH JULY 2007 / 3RD SRAVANA 1929

WP(C).No. 27501 of 2003(Y)

PETITIONERS/ACCUSED:

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1. K.J.JOSEPH, PROPRIETOR, M/S.JASMINE TEXTILES PIECE GOODS MERCHANTS, MUNICIPAL SHOPPING COMPLEX, PALAI - 686 575, DIST. KOTTAYAM.

2. BEJON JOSEPH, S/O.K.J.JOSEPH, M/S.JASMINE TEXTILES PIECE GOODS MERCHANTS, MUNICIPAL SHOPPING COMPLEX, PALAI - 686 575, DIST.KOTTAYAM.

BY ADV. SRI.C.J.JOY

RESPONDENTS/ COMPLAINANTS:

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1. M/S.SURYA HANDLOOMS INDUSTRIES, SURYA MARKET, S.K.ROAD, MEERUT P.S.CIVIL LINES, REP. BY ITS PROPRIETOR, SHRI.ANIL KUMAR SAXENA S/O.SHRI.K.D.SAXENA.

2. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI. SHYSON P. MANGUZHA.
SRI.C.K.KARUNAKARAN FOR R1

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF INVOICE NO.954 DTD. 01/08/98 ISSUED BY THE COMPLAINANT.

EXT.P2: COPY OF RECEIPT NO.546 DTD. 08/01/1999 FOR RS. 6232/- ISSUED BY THE COMPLAINANT'S REPRESENTATIVE.

EXT.P2(a): COPY OF THE ENGLISH TRANSLATION OF EXT..A2.

EXT.P3: COPY OF 5 POST DATED CHEQUES NFOR RS. 5000/- EACH DATD 05/05/1999, 10/05/1999, 15/05/1999, 20/05/1999 & 25/05/1999 RESPECTIVELY, AND AN ANOTHER CHEQUE FOR RS. 5601/- DTD. 30/05/1999 ISSUED BY THE 1ST PETITIONER.

EXT.P4: COPY OF THE LETTER DTD. 22/01/1999, ISSUED BY THE COMPLAINANT TO THE PETITIONERS.

EXT.P5: COPY OF THE REPLY NOTICE DTD. 29/01/1999 ISSUED BY THE 1ST PETITIONER THROUGH HIS COUNSEL.

EXT.P6: COPY OF THE LETTER DTD “02/01/1999”(INCORRECT) ISSUED BY THE COMPLAINANT TO THE PETITIONERS.

EXT.P7: COPY OF THE REPLY DTD. 15/02/1999 ISSUED BY THE 1ST PETITIONER THROUGH HIS COUNSEL.

EXT.P8: COPY OF THE REPLY DTD. 22/02/1999 ISSUED BY THE COMPLAINANT TO THE PETITIONERS.

EXT.P9: COPY OF THE LETTER DTD. 07/04/1999 ISSUED BY THE COMPLAINANT TO THE PETITIONERS.

EXT.P10: COPY OF THE REPLY NOTICE DTD. 17/04/1999 ISSUED BY THE 1ST PETITIONER THROUGH HIS COUNSEL.

EXT.P11: COPY OF THE LETTER DTD. 21/08/2002 ISSUED BY THE COMPLAINANT TO THE PETITIONERS.

EXT.P12: COPY OF THE COMPLAINT DTD. 13/09/1999 ISSUED BY THE COMPLAINANT.

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RESPONDENT'S EXHIBITS: NIL

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// TRUE COPY//

PIUS C. KURIAKOSE, J.

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W.P.(C)No.27501 OF 2003

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DATED THIS THE 25th JULY, 2007

J U D G M E N T

Though the submission of the learned counsel for the petitioners that the averments in the complaint Ext.P12 do not disclose an element of cheating which is a pre-requisite for making out an offence under Section 420 I.P.C. cannot be said to be totally without basis, I am of the view that it is for the petitioners to move the learned Magistrate himself for a preliminary hearing on the matter, relying on the judgments cited at the Bar by the learned counsel, including the judgment of the Supreme Court in **Navinchandra N.Majithia v. State of Maharashtra** (AIR 2000 SC 2966).

2. The Writ Petition fails and is dismissed. The petitioners are exempted from personally appearing before the Magistrate's Court and are permitted to file an application through their advocate for a preliminary hearing on Ext.P12 complaint. The learned Magistrate will give his decision as to whether the allegations in Ext.P12 make out an offence under Section 420. Decision as directed above will be given by the learned Magistrate within six weeks of the petitioners filing the application for preliminary hearing. It is also open to the petitioners to sort out the issue with the 1st respondent in the meanwhile.

tgl **(PIUS C.KURIAKOSE, JUDGE)**